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FISCAL IMPACT STATEMENT

LS 6732

BILL NUMBER: SB 169

NOTE PREPARED: Mar 30, 2005

BILL AMENDED: Mar 29, 2005

SUBJECT: Environmental Matters.

FIRST AUTHOR: Sen. Gard

FIRST SPONSOR: Rep. Wolkins

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: (Amended) This bill contains the following provisions:

Waste Tires: This bill establishes the Waste Tire Assistance Fund to be administered by the Indiana Recycling and Energy Development Board. It provides that the fund is to be used for: (1) making forgivable loans to assist persons that derive a beneficial use from waste tires; (2) reimbursing solid waste management districts or municipal corporations that conduct waste tire collection days; and (3) providing incentive payments and reimbursements for waste tire processors and waste tire end users that use waste tires that originate in Indiana for a beneficial purpose. It expands the application of the waste tire fee to tires mounted on farm tractors, implements of husbandry, and semitrailers. It also requires: (1) 80% of the waste tire fees to be deposited in the Waste Tire Assistance Fund; and (2) 20% of the fees to be deposited in the Waste Tire Management Fund.

Brownfield Taxes: The bill establishes a procedure for an owner of a brownfield to petition the Department of Local Government Finance to waive or reduce the outstanding charges against the brownfield listed on the tax duplicate. It extends the voluntary remediation tax credit by two years increases the maximum credit amount and changes the method of computation of the amount. It also increases the total amount of credits allowed statewide to \$2,000,000.

Environmental Liability: It provides that, for purposes of the law concerning underground storage tanks and petroleum releases: (1) a person is considered an owner or operator; and (2) a governmental entity is not an owner or an operator; of an underground storage tank or a petroleum facility if the person conveyed ownership or control of the tank or facility to the governmental entity because of circumstances in which the governmental entity involuntarily acquired ownership or control. It requires all of the \$90 underground petroleum storage

tank registration fee to be deposited in the Excess Liability Trust Fund. The bill also provides that a governmental entity is not liable for costs or damages associated with the presence of a hazardous substance on a property in which the political subdivision acquired an interest because of circumstances in which the governmental entity involuntarily acquired an interest in the property unless the governmental entity causes or contributes to the release or threatened release of the hazardous substance. It provides that a governmental entity is not liable if a loss results from an act taken to investigate or remediate hazardous substances, petroleum, or other pollutants associated with a brownfield.

Wetlands: The bill provides that an exempt isolated wetland may be an isolated wetland that is located on land: (1) subject to regulation under United States Department of Agriculture wetland conservation programs, including Swampbuster and the Wetlands Reserve Program, because of voluntary enrollment in a federal farm program; and (2) used for agricultural or other purposes allowed under the programs. It provides that a wetland that is created or restored as a water of the United States may be used, as an alternative to the creation or restoration of an isolated wetland, as compensatory mitigation. It allows the Department of Environmental Management to accept electronic signatures. The bill also requires the Department to study the feasibility of using environmental tickets or citations, using electronic permit applications and reports, and expediting the issuance of environmental licenses.

EQSC: The bill requires the Environmental Quality Service Council to study: (1) issues concerning the establishment and operation of mercury recovery and recycling programs in Indiana during the 2005 interim; and (2) various aspects of environmental funds.

Fish Consumption Advisory Signs: The bill requires signs to be posted at certain sites where there is a fish consumption advisory.

Effective Date: July 1, 2004 (retroactive); upon passage; July 1, 2005; January 1, 2005.

Explanation of State Expenditures: (Revised) *Waste Tires:* The bill creates the Waste Tire Assistance Fund, which is to be administered by the Indiana Recycling and Energy Development Board. The Board is to use the money in the fund to make forgivable loans, reimburse solid waste management districts, and provide incentive payments. The bill also requires the Board to prescribe the application by which qualified entities must apply for assistance from the Fund. The Indiana Recycling and Energy Development Board currently administers similar funding programs for the purpose of assisting the development of the recycling market in Indiana.

Brownfield Income Tax Credit: This bill increases the cap of the voluntary remediation tax credit by \$1 M and extends by two years the length of time the credit may be allowed. The credit is reimbursed by the Environmental Remediation Revolving Loan Fund. The bill also changes the approval process for these credits and requires a taxpayer who applies for this credit to submit specific documentation to the Indiana Development Finance Authority (IDFA) for approval. Under current law, plans must be approved by the local fiscal body.

Background: The Environmental Remediation Revolving Loan Fund received a \$5 M biennial appropriation for FY 2004-FY2005 from the General Fund. This is a nonreverting dedicated fund. According to the IDFA, who administers the Fund, the balance in the Fund was over \$15.1M as of February 22, 2005.

Brownfield Tax Reduction or Waiver. A person that owns or desires to own a brownfield may file a petition with the county auditor seeking a reduction or waiver of the delinquent tax liability. The petition must be on

a form prescribed by the State Board of Accounts and approved by the DLGF. On receipt by the DLGF of a recommendation by the fiscal body to waive or reduce the delinquent tax liability, the DLGF must review the petition and deny the petition, waive the delinquent tax liability, or reduce the delinquent tax liability. The DLGF must give notice of its determination and the right to seek an appeal by mail to the petitioner; the owner, if different from the petitioner; all persons having a substantial property interest of public record in the brownfield; the township assessor; the county property tax assessment board of appeals; the fiscal body involved; and the county auditor. On receipt by the DLGF by the person seeking an appeal of the DLGF's determination, the DLGF hold a hearing and give proper notice. After the hearing, the DLGF must give proper notice by mail of the final determination. The Indiana Board of Tax Review must conduct impartial reviews of appeals of DLGF final determinations.

The above provisions will increase administrative expenses for the entities involved. However, it is expected that the entities will be able to cover any additional expense given existing resources.

Environmental Liability: This bill attempts to clarify liability exemption for political subdivisions in relation to underground storage tanks, petroleum releases and hazardous substances. It also provides that the owners of underground storage tanks, petroleum releases, and hazardous substances, previous to the involuntary acquisition by a political subdivision, are held liable for the site's cleanup. A political subdivision is not granted exemption from liability if it contributed to any contamination release.

This bill could have a fiscal impact on the Department of Environmental Management if less staff time is spent on interpreting liability exemption to political subdivisions. However, because previous owners would be held liable for releases as described above, more staff time could be spent preparing additional comfort letters. Comfort letters provide a statement of liability exemption status for applicable political subdivisions.

EQSC & IDEM: This bill imposes additional responsibilities on the Department of Environmental Management and the Environmental Quality Service Council, staffed by the Legislative Services Agency, for the study of various environmental regulatory and administrative issues. The bill also allows the Department to accept electronic signatures. This provision could increase administrative efficiencies for the Department.

Fish Consumption Advisory Signs: The Department of Natural Resources could experience an increase in administrative expenses depending on the number of signs needed and the extent of information required on each sign.

Wetlands: No fiscal Impact.

Explanation of State Revenues: *Waste Tires:* Currently, the \$0.25 new tire fee is collected on each new tire sold at retail and each new tire mounted on a new vehicle sold at retail. The fee generated approximately \$1.6 M in FY 2004 and \$1.0 M in FY 2003, all of which was distributed to the Department of Environmental Management (IDEM) and deposited in the Waste Tire Management Fund.

This bill reallocates 80% of the revenue to the Waste Tire Assistance Fund and 20% to the Waste Tire Management Fund. Based on the revenue collected in FY 2004, 80% or approximately \$1.28 M would be deposited in the Waste Tire Assistance Fund. IDEM and the Waste Tire Management Fund would receive the remaining 20%, or \$320,000. The amount of additional revenue expected to be generated by making farm tractors, implements of husbandry, and semitrailers subject to the fee is indeterminable.

Background: Currently, all revenue generated by the \$0.25 fee is deposited in the Waste Tire Management Fund. Money in the fund is intended for waste tire cleanup and encouraging the development of the reuse market for waste tires via grants. Through an interagency agreement between the Budget Agency, IDEM, and Department Commerce, all revenue generated by the waste tire fee is used by IDEM (rather than splitting the fee with Commerce as specified in statute) for waste tire cleanup and providing Scrap Tire grants. This bill removes the language currently in statute by which the agreement was made. Money deposited in the new Waste Tire Assistance Fund is to be used for assisting with the collection, reuse, and recycling of waste tires throughout Indiana.

Brownfield Income Tax Credit: This bill increases the cap of the voluntary remediation tax credit from \$1M to \$2 M beginning in tax year 2005. The maximum amount of credit which is allowed for each brownfield site is increased from \$100,000 to \$200,000. The bill also extends the applicability of these tax credits which were set to expire December 31, 2005, to December 31, 2007. The bill extends the carry forward provisions of these tax credit. According to the IDFA, no credits have been granted to date. However there are sufficient funds in the Environmental Remediation Revolving Loan Fund to reimburse the General Fund for any new credits granted in tax years 2005, 2006, and 2007. (See State Expenditures Above.)

Environmental Liability: The bill also makes it so that the \$90 Underground Petroleum Storage Tank Registration Fee is no longer split between the Excess Liability Trust Fund and the Petroleum Trust Fund. Currently, \$45 goes to each fund. For FY 2004, approximately \$710,000 were collected by the Department of Revenue and deposited into the Petroleum Trust Fund. This bill would cause future deposits from this fee to be made only to the Excess Liability Trust Fund.

Explanation of Local Expenditures: *Brownfield Tax Reduction or Waiver.* If a person files a petition, the county auditor must forward a copy of the complete petition to the township assessor in which the brownfield is located; the owner, if different from the petitioner; all persons having a substantial property interest of public record in the brownfield; the county property tax assessment board of appeals; the fiscal body involved; IDEM; and the DLGF.

On receipt of a complete petition, the county board must conduct a public hearing on the petition. The board must give notice of the date, time, and place fixed for the hearing by mail to the entities listed above. The board may recommend that the DLGF grant the petition or approve a reduction of the delinquent tax liability under certain conditions.

After the hearing, the county board must give notice, by mail, to the parties listed above. The fiscal body must review the petition and submitted by the board and deny the petition, recommend that the DLGF waive the delinquent tax liability, or recommend that the DLGF reduce the delinquent tax liability. The fiscal body may recommend a reduction of the delinquent tax liability in an amount that differs from the amount of reduction recommended by the board. The fiscal body must publish notice of its consideration of the petition and forward to the DLGF written notice of its action.

After the DLGF gives notice of its determination, a person aggrieved by a DLGF determination may obtain an additional review by the DLGF and a public hearing by filing a petition for review with the county auditor. The county auditor must transmit the petition to the DLGF. A petitioner may initiate an appeal of the DLGF's final determination by filing a petition with the county assessor.

The above provisions will increase administrative expenses for local units. However, it is presumed that the

local units will be able to cover any additional expense given existing resources.

Explanation of Local Revenues: *Brownfield Tax Reduction or Waiver.* A person that owns or desires to own a brownfield may file a petition with the county auditor seeking a reduction or waiver of the delinquent tax liability. The county auditor must reduce or remove the delinquent tax liability on the tax duplicate if the petition is approved. The reduction or removal of the tax liability applies until the auditor determines if the plan was complete on the required date. If the plan was complete, the reduction or removal becomes permanent. If not complete, the auditor must restore to the tax duplicate the delinquent tax liability. Removing or reducing the liability will reduce revenues to local units if the delinquency would have been paid were it not for the petition. However, restoration of a brownfield could increase local revenues by adding property to the tax base if improvements are made to the brownfield.

State Agencies Affected: Department of Environmental Management; Legislative Services Agency; Indiana Recycling and Energy Development Board; Indiana Development Finance Authority; Department of Local Government Finance.

Local Agencies Affected: All.

Information Sources: *Indiana Department of Revenue Annual Report*, October 1, 2004; Calvin Kelly, Indiana Development Finance Authority; *Monthly Report of Net Tax Collections*, Department of State Revenue.

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